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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,806	11/12/2003	John C. Herman	H009.PAT-2	6970
7590	11/29/2005		EXAMINER	
Emery L. Tracy P.O. Box 1518 Boulder, CO 80306-1518			BRITTAINE, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/706,806	HERMAN, JOHN C.	
	<b>Examiner</b>	<b>Art Unit</b>	
	James R. Brittain	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 September 2005.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6,8-10 and 12-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6,8-10 and 12-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### *Priority*

Applicant's reference to this application as a continuation of a provisional application while also claiming priority benefit is improper and must be stricken while also claiming priority benefit is improper. Continuation status can only exist between non-provisional applications.

### *Claim Objections*

Claims 1-6, 8-10 and 21 are objected to because of the following informalities: The term "the supporting wall" (claim 1, line 12) lacks clear antecedent basis. The remaining claims are objected to because they depend from objected to claims. Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-10, 12, 16-19, 20 and 22 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kilo et al. (US 5692657) in view of Grose (US 6419133).

Kilo et al. (figures 1-3) teaches clip device structure for securing a stethoscope to clothing, the clip device comprising: a main body 21 having a top surface and a bottom surface; a support wall 57 extending from the top surface, clip means 55 extending from the supporting wall 57 over the top surface of the main body for securing the assembly to clothing; and item retaining means in the form of the finger 45 defining a lip portion extending from the main body and extending along the back edge by extending parallel and adjacent thereto over the bottom

surface of the main body for releasably securing the stethoscope to the main body. The difference is that the main body lacks a pattern of grooves. However, Grose (figures 1, 2) teaches that it is desirable to have the main body configured with grooves 12 so as to better hold tubes of the stethoscope. Grose stresses the flexibility of the material as indicated in column 1, lines 49-65. The entire device is flexible and the grooves 12 inherently provide controlled bending. As Grose teaches patterning the base member with grooves to better secure the held object, it would have been obvious to modify the holder of Kilo et al. to have a pattern of grooves on the base member to hold an object. The particular pattern of grooves on the front and back surfaces is a matter of choosing a configuration for the desired holding effect of an object and is obvious over Grose that clearly provides flexible grooves that can receive an object.

Claims 13-15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilo et al. (US 5692657) in view of Grose (US 6419133) as applied to claim 12 above, and further in view of Saarikko et al. (US 5597102).

Further modification of the clip device structure of Kilo et al. such that the support wall extends from the edge of the base member would have been obvious in view of Saarikko et al. suggesting such a location for the clip 5 to extend from.

#### *Response to Arguments*

Applicant's arguments filed September 19, 2005 have been fully considered but they are not persuasive. Applicant alleges that the flexible material defining the device of Saarikko et al. would not flex at the grooves because they are slightly curved. Applicant provides no evidence to support this allegation. The slight curvature shown by Saarikko et al. would in no way make the device "rigid" and Saarikko et al. repeatedly describes the flexibility of the material. The

particular pattern of grooves is therefore a matter of providing flexibility for the configuration of the held object, which is what Saarikko et al. provides and applicant has not demonstrated any unobvious difference over that of the above combination.

*Conclusion*

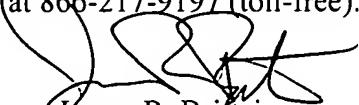
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB